IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Om Prakash Mahecha
vs.
Ranchhod Bharti.

S.B.CIVIL SECOND APPEAL NO.15/2005 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 26.8.2004 PASSED BY SHRI TARA CHAND SONI, ADDITIONAL DISTRICT JUDGE NO.1, JODHPUR IN CIVIL APPEAL NO.17/2003.

DATE OF JUDGMENT ::: 10.4.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. RK Thanvi, for the appellant.
Mr. OP Pungalia, for the respondent.

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BY THE COURT:

Heard learned counsel for the parties.

The plaintiff/respondent filed a suit for eviction from the suit shop on the ground that the plaintiff along with his two sons will do the business in the suit shop. The plaintiff pleaded that his two sons will contribute towards

the house expenses of the plaintiff's family. The plaintiff suit was dismissed by the trial court by judgment and decree dated 30.5.2003 on the grounds that it has come on record in the evidence of the plaintiff that the plaintiff is old man and cannot do the business. The plaintiff's one son Neelkamal is in service in a private firm and another son started taxi driving after availing loan being unemployed person. In view of the above facts, the trial court reached to the conclusion that both the sons of the plaintiff are earning members, therefore, the need of the plaintiff cannot be said to be surviving. The appellate court reversed the judgment of the trial court. Hence, this second appeal.

According to learned counsel for the appellant, the trial court gave reasoned judgment and the plaintiff's sons are earning, therefore, the plaintiff's entire case that they are not having any earning to contribute towards family expenses has been belied by the plaintiff himself. The plaintiff is an old man. The said judgment of the trial court was reversed by the first appellate court without appreciating the reasons given by the trial court.

I have considered the submissions of learned counsel for the appellant and perused the facts of the case and record.

It appears from the judgment of the trial court that the trial court proceeded under assumption that till the

suit shop became available for the business of the plaintiff and his family members, the plaintiff's sons could not have done the job anywhere. That approach was contrary to law because of the reasons that it is not necessary that till shop is made available, the person for whose need eviction has been sought, should not earn. In view of the fact that the plaintiff himself became old, the need of doing business by the plaintiff's sons must have increased rather than its end. The first appellate court considered the facts of the case and looked into Section 15 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 which provides that in case, the evicted shop is not used for the purpose for which need was shown by the plaintiff, the tenant will be entitled to take possession of the shop back under Section 15 of the Act of 1950.

In view of the above, I do not find that the first appellate court has committed any error of law or fact in decreeing the plaintiff's suit.

Accordingly, I do not find that any substantial question of law arises in this appeal, therefore, this appeal deserves to be dismissed.

At this stage, learned counsel for the appellant prayed that sufficient time may be granted to vacate the suit premises because the appellant is running his business in the suit shop since long and he will have to make alternative arrangement and wind up his business.

Looking to the totality of the facts, this Court deems that the appellant be granted one year's time to vacate the suit shop.

Therefore, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a period of one month from today that he shall hand over the vacant possession to the landlord by or before 30.4.2007 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, within a period of two months from today before the trial court or directly to the landlord, the decree under challenge shall not be executed till 1.5.2007. The appellant shall also deposit the rent month by month by 15th day of each succeeding month of his tenancy in the trial court.

In case of non-compliance of the order or default in payment of rent mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya